

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 295 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NILKANTH PETROLEUM

Versus

COLLECTOR,

Appearance:

1. Criminal Revision Application No. 295 of 2003
MR HR PRAJAPATI for Petitioner No. 1
MR HM PRACHCHHAK, A.P.P. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. Petitioner Nilkanth Petroleum, a proprietary firm, has filed this Revision Application u/ss. 397 r/w 482 of the Code of Criminal Procedure, 1973, before this Court against the judgment and order dated 31.3.2003, passed by the learned Additional Sessions Judge, Banas Kantha at Palanpur, in Criminal Appeal No.3 of 2000,

whereby the learned Judge has partly allowed the Appeal, filed by the petitioner-original Appellant, and modified the order passed by the Collector, Banas Kantha at Palanpur, by ordering confiscation of 50 % of stock of kerosene instead of 100 % confiscation ordered by the Collector.

2. The petitioner has joined in this Revision Petition the Collector, Banas Kantha, as sole respondent, who had initially passed order of 100 % confiscation of stock of kerosene belonging to the petitioner - appellant on 10.1.2000 on the breach of conditions found to have been committed by the petitioner at the time of inspection carried out on 26.10.1999. From the certified copy of the Judgment of the learned Addl. Sessions Judge, Banas Kantha at Palanpur, it appears that only the State of Gujarat was joined as party - respondent in Criminal Appeal No.3 of 2000. However, the memo of Appeal filed before the Court of learned Addl. Sessions Judge, Banas Kantha at Palanpur was not annexed. Learned Counsel Shri Prajapati has produced the certified copy of said Memo of Appeal during the course of arguments which is ordered to be taken on record. From the memo of Appeal also it is clear that only the State Government was impleaded as party - respondent in Appeal before the learned Addl. Sessions Judge, Palanpur. The office was required to check everything, including the names of the parties before this Court and the Court below, whose orders are challenged before this Court. It seems that without applying its mind the office has straightway circulated this Revision Application where the State of Gujarat, which is always necessary party in every criminal matters filed before this Court, was not joined as party respondent.

3. It is true that in the prayer clause the petitioner has not challenged the impugned Judgment and order of confiscation dated 10.1.2000 passed by the Collector, Banas Kantha District at Palanpur, but in the Memo of this Revision Application the grounds have been taken by the petitioner challenging the order of confiscation passed by the Collector also. This was the second glaring mistake committed by the office of this Court of circulating this Revision Application without the original order passed by the Collector, placed on record of this Revision. However, the submission of Shri Prajapati for the petitioner was that the impugned order of confiscation dated 10.1.2000, passed by the Collector, Banas Kantha at Palanpur, has merged into the subsequent order dated 31.3.2003, passed by the Addl. Sessions Judge, Palanpur, in Criminal Appeal No.3 of 2000,

therefore, it was not necessary for him to annex the same and this Court can always decide this Revision Application considering the order passed by the Addl. Sessions Judge, Palanpur, in Appeal. He also submitted that the Collector was a necessary party as he had passed the impugned order of confiscation and, therefore, he was joined as respondent in this Application and the State of Gujarat was a formal party, therefore, it was not joined. He submitted that if his attention was drawn by the office when he filed Revision Application then he would have certainly impleaded the State of Gujarat as party respondent in this Revision Petition.

4. Law on this point is very well settled. If the State of Gujarat is not impleaded as party respondent in Criminal matters, though it is a formal party, the matter is required to be dismissed straightway on this ground. I would have granted the request of Shri Prajapati to implead the State of Gujarat as party respondent in this Revision Application, but it would be a futile exercise in view of the fact that initially the order of confiscation, passed by the Collector, Banas Kantha at Palanpur, was not produced. At this stage Shri Prajapati requested that he may be allowed to produce the certified copy of said order. Even this would not help him as, even otherwise on merit also I am not satisfied that this Revision Petition deserve admission.

5. On merit Shri Prajapati vehemently submitted that there was no allegation against the petitioner of black marketing or hoarding, therefore, the Collector and the learned Addl. Sessions Judge, Palanpur, both committed an error in passing the order of confiscation. He submitted that the learned Collector by his impugned order dated 10.1.2000 passed an order of confiscation of entire stock of kerosene, whereas the learned Addl. Sessions Judge partly allowed the Appeal of the petitioner - applicant and reduced it to 50 % confiscation. He submitted that when there was a technical breach in the eye of law then even confiscation of 50 % ordered by the learned Addl. Sessions Judge was highly disproportionate. Relying on the Judgment of the Division Bench of this Court reported in 1999 CRIMINAL LAW JOURNAL 638 Shri Prajapati submitted that at the most order of confiscation of 25 % could have been passed. He, therefore, submitted that this Revision Application be accepted and allowed to that extent and the order of the Collector of 100 % confiscation, modified and reduced to 50 % confiscation of stock of kerosene, be further modified and reduced to 25 % by this Court in this Revision.

6. From the above submission made by Shri Prajapati one thing is clear that while passing the impugned order the learned Addl. Sessions Judge has not committed any error of jurisdiction or error of law which calls for interference of this Court. In the case of MOHD. YUNUS v/s. MOHD. MUSTAQUIM, reported in AIR 1984 SC 38 the Hon'ble Supreme Court held that even error of law cannot be corrected by the High Court under Article 227 of the Constitution. The scope of Revision Application u/s.397 and 401 Cr.P.C. is very narrow and limited then the scope of Article 227 of the Constitution. When the learned Addl. Sessions Judge, in his discretion, partly allowed the Appeal and modified the order of confiscation passed by the collector and reduced it to 50 %, from 100%, then I am of the considered opinion that such discretionary orders cannot be interfered by this Court in its revisional jurisdiction.

7. From the reasons assigned by the learned Judge in Para : 10 and 12 of his Judgment and order dated 31.3.2003 it is more than clear that there was a breach and in fact it was conceded by learned Counsel Shri Prajapati that it was a technical breach and on facts and circumstances of the case the learned Addl. Sessions Judge thought it fit to exercise his discretion in favour of the petitioner-appellant by reducing it to 50 % confiscation, from 100% as ordered by the Collector, then it cannot be said that the learned Judge has committed any error while passing the impugned order.

In view of the above discussion, on all counts, this Revision is dismissed.

Date : February 12, 2004 (B.J.Shethna, J.)

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